

# What is the issue? Cicero's *Defence of Milo*

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When Cicero took the stand in early April 52 B.C. to deliver his *Defence of Milo*, he was Rome's most distinguished orator defending a man and an act of questionable repute. Publius Clodius Pulcher – one of Rome's most notorious politicians – had been brutally murdered on the Appian Way on 18 January. There was no doubt about the perpetrator of the crime: Titus Annius Milo, Cicero's client, with whom Clodius had bitterly wrangled for over five years. Only now, however, almost three months after Clodius' death, was Milo finally being prosecuted on a charge of violence (*de vi*). In the intervening period there had been general uproar and rioting, the senate house had been burned to the ground, and Pompey was appointed as a consul without colleague to steady the crisis. By the time Cicero spoke, violent outbursts had already interrupted proceedings and soldiers stood guard around the forum. This was no ordinary trial. Nor was Cicero successful: Milo was condemned by 38 votes to 13. Yet history rates the published version of his speech as one of Cicero's finest. What makes it so masterful?

## Finding the right argument

Winning the audience's goodwill in a trial of such magnitude was never going to be an easy job for Cicero. Luckily for him, however, Greek rhetoricians had long identified a pretty convincing framework to help speakers identify what was at issue in any trial. And as both Cicero's early speeches and his own rhetorical treatise *On Invention* reveal, Cicero was completely at home with their thinking. Success depended on reaching the right diagnosis for the dispute at hand: was the overriding question one of fact (did the defendant commit the act?), of definition (what did the defendant do?), of quality (was the defendant's action justified or unjustified?), or jurisdiction (was the current legal process a fair one?).

As Cicero admits, he could not feasibly deny Milo's guilt. A large number of witnesses had already testified to it, and Cicero was consequently forced to confirm that Milo had indeed killed Clodius. However, he needed to refute the prosecution's claim that Clodius' death was a premeditated and unlawful act of violence. And so, Cicero bombarded the

jury with a range of conflicting considerations upon which to base their verdicts: was Clodius' death the result of murder or self-defence? If Clodius was murdered, was his death justifiable? And, finally, was the legal process employed in the prosecution of Milo fair? By causing the jury to reflect on all these questions, Cicero's *Defence of Milo* provides an excellent opportunity for examining the art of rhetoric in practice. The classification of issues becomes the focus – not simply the starting point – of his argumentative strategy.

## Murder or self-defence?

Writing in the first century A.D., Asconius records an impartial account of the events leading up to and culminating in Clodius' death. It happened by chance, he stresses, that when Milo was heading *out* of Rome, he met his arch-rival Clodius who was returning to the city, on the road near Bovillae. The two men passed each other along the way but, when a fight broke out among their entourages, Clodius was badly wounded. Deeming it safer to finish

off his foe – rather than to leave him alive, injured, and angry – Milo ordered his men to drag Clodius out of a nearby tavern in which he had taken refuge, and kill him. We do not know precisely where Asconius got his information from, but it is a far cry from the murder scene presented by Cicero. For rather than pursue the argument that the encounter was accidental, Cicero alleged Clodius' death was an ambush gone wrong: *vi victa vis*, Cicero claims at section 30: 'Violence was vanquished by violence.' Clodius, he argued, had previously boasted about Milo's imminent death, he premeditated his murder, and obtained information about Milo's travel plans. Having fallen into the trap set for him, Milo killed Clodius in self-defence.

Scholars are divided as to whether this is an issue of definition or quality. Arguably it contains elements of both: first Cicero prompts the jury to regard Clodius' murder as an act of self-defence, and then he argues that it was therefore justifiable. For the Latin text in section 30 broadly echoes that at section 9, where Cicero lays the legal foundations for this argument: 'if there is any time when the killing of a man is justified (and there are many such)', he claims, 'it is surely not only justified, but even necessary, when violence fights back against a show of violence' (*cum vi vis inflata defenditur*). As proof of his stance, Cicero adduces the provisions of a foundational text of Roman law, the 'Twelve Tables', for dealing with a thief (*fur*, in Latin): according to them, if a man killed a thief in self-defence then the act was legally permissible. Although Clodius was no common robber, by a clever extension of the idea, Cicero adapted the provision to fit Clodius. Travelling light, unaccompanied, and on horseback, Clodius' actions not only mark him as a likely suspect in the plot to kill Milo; in Cicero's version of events Clodius is an ambusher (*insidiator*) and – with a bit of imagination – a bandit (*latro*). Put like this, the death of Clodius was legally permissible: 'if it could not be justified by the law,' Cicero argues at section 30, 'I should have no defence to offer.'

## Was Clodius' death a good thing?

In the same breath with which he focuses the jury's attention on the manner of Clodius' death, Cicero makes it clear that he has much more to say about its implications. 'I won't mention the benefit to the republic, nor to yourselves, nor to all good men', he adds. But as the long second half of the speech amply demonstrates, he finds it hard to keep his promise. Clodius was a man who, while alive, had committed monstrous adulteries, incest, sacrilege, mass slaughters, and armed violence. Had he lived longer he planned to levy an army of slaves, establish himself as master over all public and private property; no man's wealth, wife, or child would be free from his clutches (*Mil.* 72–7). 'Who does not agree and at the same time declare that – of all men in history – Titus Annius [Milo] is the greatest benefactor to the state?' Cicero asks rhetorically, causing the jury to reflect on the issue of quality.

Cicero had already prepared the way for this argument in section 24, where his language emphasized the violence of Clodius' tyrannical plans back in his tribunate of 58 B.C.: to harass the state with every possible form of crime (*omni scelere ... vexare rem publicam*), to maul and eventually to overthrow it (*ad dilacerandam rem publicam ... ad evertendam rem publicam*). One of the problems Cicero faced in the trial was that the senate had already decreed that Clodius' death and the violence that followed it were against the interests of the state (*contra rem publicam*). To hostile onlookers, the cards looked stacked against Milo. 'But the senate denounced the act, not the man', Cicero insists at section 31. Once again, he was forced to argue that Clodius had set the trap for Milo; in so doing, Clodius had been the one acting against the interests of the community. Thus, if Milo *had* planned to kill Clodius, he reminds his audience at section 79, he ought not fear punishment at the hands of the very men he had liberated. The death of Clodius had surely been a good thing.

## A fair trial for Milo?

But the senatorial decree denouncing the death of Clodius was not the only obstacle to Milo's trial. When Pompey was appointed sole consul, one of his first acts had been to promulgate a new law on violence explicitly to deal with recent events. This law instituted special proceedings for bringing to justice all who had acted against the state: under Pompey's new arrangements the evidence and witnesses were presented *before* the speeches, rather than afterwards – as had been the custom in previous trials. What is more, the time allowed for speeches was

restricted: the prosecution was given only two hours to present its case, while the defence had just three. Arguing against the validity of the legal process employed in the prosecution of Milo was near impossible: 'But although it is not unjust,' Cicero admits at section 13, 'still the senate never thought its constitution was necessary.'

There were some who thought that, by passing his new law, Pompey had already passed his verdict on Milo. And they claimed that Pompey, through fear of Milo, was engineering his conviction (*Mil.* 65–6). So was Milo being deprived of a fair trial? Far from pursuing this line of thought, Cicero dismisses it. 'Who would believe that Gnaeus Pompey would wait for a trial to exact his revenge?' he asks rhetorically at section 70. No, the truth was this: Pompey saw that, although Milo had admitted the deed, a defence could still be made and a jury asked to deliberate (*Mil.* 15). But what kind of defence could be made?

## What is Cicero's argument?

Throughout his *Defence of Milo*, Cicero continually invites his audience to weigh up the possible arguments in favour of his client. After all, the jury – like Cicero – were educated men, versed in the rhetorical literature of Greece and Rome. The problem for Cicero was that there were multiple lines of attack which he had to refute. The prosecution alleged that no man who murdered another should see the light of day (*Mil.* 7); the senate had declared that the death of Clodius and the events that followed were against the interests of the Republic (*Mil.* 12); furthermore, common opinion had it that even Pompey was trying to secure the condemnation of Milo (*Mil.* 15). Rather than force one argument upon the jury, Cicero marshalled a whole array of them: scattering arguments like seeds to see what might germinate (as Pliny the Younger was later to say of his own oratorical practice).

The most dominant argument in the text of the published speech is that Milo had acted legally in self-defence. And yet, in case the jury was in any doubt about the real crux of Milo's defence – that Clodius' death was a benefit to the Republic – Cicero had a visual reinforcement: Milo himself, who rather than adopt the shabby clothing of a defendant on trial, stood calmly in philosophical acceptance of his fate. Here was a defendant who admitted the deed. He could not deny the fact. Yet the image of self-restraint he projected and the order he embodied stood in stark contrast to the character and career of Clodius. Like Pompey and the guards surrounding the forum, Milo was a man to act in the interests of the state, to ensure civic harmony. The prosecution had

claimed that Pompey's new law on violence was bent against Milo. Conversely, Cicero showed that they were all on the same side: fighting against the violence perpetrated by Clodius and his supporters.

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